

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

LATASHA DAVIS, JENNIFER ELLIOTT,
and MARLA ALIECE SIMS-KING,
individually and as representatives of a class
of participants and beneficiaries in and on
behalf of the WASHINGTON UNIVERSITY
RETIREMENT SAVINGS PLAN,

Plaintiffs,

vs.

WASHINGTON UNIVERSITY IN ST. LOUIS
and WASHINGTON UNIVERSITY IN ST.
LOUIS BOARD OF TRUSTEES,

Defendants.

Civil Action No. 4:17-CV-01641-RLW

**MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE
SECOND AMENDED CONSOLIDATED CLASS ACTION COMPLAINT**

Plaintiffs respectfully submit this Memorandum in support of their Unopposed Motion seeking leave to file a Second Amended Consolidated Class Action Complaint to include as additional Defendants: (i) the Washington University in St. Louis Retirement Plan Advisory Committee (the “RPAC”), (ii) the Washington University in St. Louis Plan Administration Committee (the “PAC”), and (iii) the Washington University in St. Louis Executive Vice Chancellor and Chief Administrative Officer (the “Executive Vice Chancellor”).

The Case Management Order of September 16, 2020 (Dkt. 69) provided that “[a]ll motions for joinder of additional parties or amendment of pleadings shall be filed by **January 15, 2021.**” In the Court’s Order of January 15, 2021 (Dkt. 79) granting Plaintiffs’ Unopposed Motion for Extension of Time, that deadline was extended until January 29, 2021.

In the course of discovery, Plaintiffs have learned that Defendant Washington University has appointed the Executive Vice Chancellor as the Plan Administrator and Named Fiduciary for the Washington University Retirement Savings Plan (the “Plan”). In that capacity, the Executive Vice Chancellor has delegated to the RPAC responsibilities related to the Plan, including establishment and maintenance of the Plan’s investment policy; selecting, monitoring and modifying the Plan options; reviewing the appropriateness of Plan fees and expenses and the appropriateness of Plan communications regarding fees and expenses; and such other duties as may be delegated or assigned to the RPAC by the Plan’s Named Fiduciary.

Additionally, the Executive Vice Chancellor has delegated to the PAC responsibility for interpretation of Plan provisions, maintenance and administration of claim procedures, and ensuring proper Plan administration. Effectively, the RPAC and the PAC are responsible for exercising virtually all fiduciary responsibility for the operation and administration of the Plan, subject to the control and supervision of the Executive Vice Chancellor, the Board of Trustees and Washington University.

“[A] party may amend its pleading . . . with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). Defendants have provided Plaintiffs with the required consent. “And leave to amend should be granted absent a good reason for the denial, such as undue delay, bad faith, undue prejudice to the nonmoving party, or futility.” *Thompson-El v. Jones*, 876 F.2d 66, 67 (8th Cir. 1989). None of these conditions exist here.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that they be permitted to file the accompanying Second Amended Consolidated Class Action Complaint to include as additional Defendants (i) the RPAC, (ii) the PAC, and (iii) the Executive Vice Chancellor.

DATED: January 29, 2021

Respectfully submitted,

/s/ John F. Edgar

John F. Edgar #47128
EDGAR LAW FIRM LLC
2600 Grand Blvd., Suite 440
Kansas City, MO 64108
Tel.: 816-531-0033
Fax: 816-531-3322
jfe@edgarlawfirm.com

Todd S. Collins
Shanon J. Carson
Eric Lechtzin
Ellen T. Noteware
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103
Tel.: 215-875-3000
Fax: 215-875-4604
tcollins@bm.net
scarson@bm.net
enoteware@bm.net

John J. Nestico
SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNS LLP
6000 Fairview Rd., Suite 1200
Charlotte, NC 28210
Tel.: 510-740-2946
Fax: 415-421-7105
jnestico@schneiderwallace.com

Todd Schneider
SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNs LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Tel.: 415-421-7100
Fax: 415-421-7105
tschneider@schneiderwallace.com

Steve Schwartz
Jon Lambiras
CHIMICLES & TIKELLIS LLP
361 West Lancaster Avenue
Haverford, PA 19041
Tel.: 610-642-8500
Fax: 610-649-3633
steveschwartz@chimicles.com
awf@chimicles.com

Robert J. Kriner, Jr.
CHIMICLES & TIKELLIS LLP
222 Delaware Avenue, Suite 1100
Wilmington, DE 19801
Tel.: 302-656-2500
Fax: 302-656-9053
rjk@chimicles.com

John J. Carey
John F. Garvey
James J. Rosemergy
CAREY AND DANIS
8235 Forsyth Boulevard
Suite 1100
Clayton, MO 63105
Tel.: 314-725-7700
Fax: 314-721-0905
jcarey@careydanis.com
jgarvey@careydanis.com
jrosemergy@careydanis.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2021, I electronically filed the foregoing document with the Clerk of the Court for the Eastern District of Missouri, using the Court's CM/ECF electronic case filing system. The electronic case filing system sent a "Notice of E-Filing" to the attorneys of record in this case:

/s/ John F. Edgar